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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICOH COMPANY, LTD.,

Plaintiff,

VS.

AEROFLEX INCORPORATED, et al.,

Defendants.

CASE NO. CV 03-4669-MJJ (EMC)

DISCOVERY MOTION

RICOH'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL AGAINST MATROX DEFENDANTS

Date: TBD

Time: TBD

Courtroom: C

CASE NO. CV 03-4669-MJJ

RICOH'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM THE MATROX DEFENDANTS

1 The Matrox entities repeatedly have shifted the goalposts in discovery. Maven was listed in
2 their original product declarations in August 2005. Before any discovery of the Maven chip could take
3 place, the Maven chip was removed (in a declaration that Matrox waited for months to serve), based on
4 the faulty premise that it was synthesized by a third party. As required by this Court's May 8, 2006
5 Order on Ricoh's motion for sanctions, Matrox served a new declaration on May 15, 2006 where the
6 Maven chip was returned to Matrox's declared products list. Matrox's response admits that it has never
7 produced any of the required information that is necessary to show infringement, and even admits that
8 "these documents no longer exist." Indeed, the Matrox entities do not seriously dispute that they
9 stonewalled all attempts by Ricoh to obtain discovery on the ASIC.
10

11 Matrox has failed to provide any explanation for their failure to produce documents that it
12 should have accounted for as early as 2003. Matrox assures the Court that they "are prepared to provide
13 the Court with a declaration from Mr. Chiappini detailing his knowledge regarding the Maven
14 documents," but they inexplicably fail to supply that declaration with their response. In the absence of
15 such a declaration, neither Ricoh nor the Court can know the real reason for Matrox's stonewalling.
16 Ricoh suspects it is because the Maven chip was produced with a version of Design Compiler that
17 Synopsys recently has admitted incorporates rules, despite its repeated denials to the contrary. In short,
18 if the Maven chip is admitted into evidence, it could undermine defendants' principal themes.
19

20 Instead of explaining itself, however, Matrox contends that its failure to provide discovery
21 should be held against Ricoh and that Ricoh should fail in its burden of proving its case against these
22 particular ASICs. Because Matrox has admitted that it has destroyed the relevant evidence, Ricoh
23 should be entitled to the presumption that it sought in its original motion to show cause papers.
24

25 Matrox, the other ASIC defendants and Synopsys have been trying to run out the clock
26 throughout discovery in a transparent attempt to delay trial. The discovery deadline has come and gone.
27 Matrox has squandered its last opportunity to provide a satisfactory explanation for the destruction of
28

1 the requested documents including: (1) script(s), including DC setup files, (2) inputs, including RTL
2 inputs, (3) technology library(ies), (4) log file(s) and (5) netlist(s). In addition to its refusal to produce
3 these documents, Matrox also refuses to stipulate that Ricoh's infringement theory against Matrox
4 would proceed in the absence of the missing technical information for the Maven and Rainbow Runner
5 ASICs. Because there is no dispute between the parties that if Ricoh's infringement theory is accepted
6 by the jury, all of the accused Matrox chips will be deemed infringing, this stipulation is a reasonable
7 compromise position. Indeed, as Ricoh's expert reports and infringement contentions demonstrate,
8 every other declared Matrox product infringes the '432 patent in multiple ways and on similar theories.
9 Given that Maven and Rainbow Runner were created using Design Compiler and were created in a
10 similar manner by Matrox, based on what is known and as admitted by Matrox's own product
11 declarations, it is reasonable to infer that these ASICs infringe in at least the same ways; a stipulation to
12 this effect will save all parties the time and expense of litigating the issue.
13

14 As detailed in Ricoh's motion, Matrox refused to even entertain a stipulation unless Ricoh
15 filed the present motion to preserve its rights. Predictably, Matrox now argues that the motion was
16 unnecessary and is using it as a further excuse to resist discovery. Although Ricoh explicitly stated at
17 page 3 of its motion that it had "no desire to conduct a detailed investigation into when the relevant
18 documents were destroyed, and whether Matrox failed to take adequate steps to preserve these files
19 during the pendency of this litigation," Matrox seizes upon this statement at page 2 of its opposition as
20 "suggest[ing] that the Matrox entities have destroyed documents related to the Maven and Rainbow
21 Runner products." The fact is, Matrox admits that it does not have the relevant documents that it once
22 had. Ergo, the documents were destroyed. *See., e.g.,* Weinstein Dec., Ex. 2 at 7 ("the company was
23 very young at that point and document retention wasn't the primary objective."); Def. Opp. at 3
24 (admitting that "these documents no longer exist."). While Ricoh does not imply that this document
25 destruction was done solely to subvert justice – because Ricoh has no knowledge of when the documents
26
27

1 were destroyed – the fact is, the documents once existed, and now do not. Ricoh reiterates that it has no
2 desire to conduct such an investigation; rather, it is proposing a solution that preserves Ricoh’s rights
3 and has no unduly prejudicial effect upon Matrox. Matrox’s attempt to accuse Ricoh of jumping to
4 conclusions about why the documents were destroyed is not only inconsistent with the motion, but it
5 utterly ignores Ricoh’s repeated requests for a reasonable stipulation. Even at this late date, Matrox’s
6 response is yet another attempt to avoid their obligation to provide a reasonable explanation as to the
7 existence and location of the requested documents. If this Court’s orders and deadlines are to have any
8 meaning, Matrox cannot be now allowed to provide a last-minute and unverifiable explanation that they
9 refused time and again to provide in a timely manner. If Matrox refuses to now enter into a reasonable
10 compromise stipulation that would short circuit this entire inquiry, it is appropriate for this Court to
11 make the decision for them.
12

13 Matrox seeks to be relieved of its obligations to explain its failure to produce these critical
14 documents while at the same time demanding the production of even older and more obscure documents
15 from Ricoh¹. While Ricoh remains willing to seek a compromise stipulation on this matter, Matrox
16 nevertheless refused to entertain the idea, necessitating the instant motion. In the absence of any
17 contrary facts, Ricoh can only conclude that Matrox failed to perform an adequate search, to provide an
18 adequate explanation as to what search was performed, and has not even explain to the Court why the
19 documents could not be located. Matrox’s argument that they have no obligation to explain themselves
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21

22
23 ¹ In a meet and confer with Denise De Mory on June 26, 2005, Defendants were not satisfied with Ricoh’s detailed
24 summary of its search for and production of documents from the 1980’s, even though this summary was far more
25 detailed than what was required by the Court. Defendants insisted that Ricoh prepare a detailed reconstruction
26 of its search regardless of the burden, including documenting the dates of each of the searches, who was
27 involved, who was interviewed, summaries of those interviews, a file-by-file identification of what was reviewed,
28 the locations of each of the files, and a description of all of the documents that were located, whether or not
produced. Even though Matrox is under multiple court orders to produce the information that is the subject of
this motion (Ricoh is under no similar order), Matrox has not even begun to provide even a fraction of what it is
demanding of Ricoh.

1 is emblematic of Matrox's refusal to cooperate with Ricoh on any issue without Court involvement –
 2 Matrox has forced Ricoh to file the present motion, yet still refuses to provide even the most basic
 3 explanation for its refusal to produce the documents.

4 Matrox also argues that its inability to produce even basic design and development materials
 5 is somehow Ricoh's fault. By Matrox's own admission, Maven and Rainbow Runner were synthesized
 6 using Design Compiler during the damages period. Weinstein Dec., Ex. 3-6. As demonstrated by
 7 Ricoh's recently filed infringement contentions and expert reports, every other declared Matrox product
 8 was synthesized by Design Compiler in a way that infringes the '432 patent. The synthesis of each
 9 declared product contains multiple instances of infringement. The jury may infer from those facts that
 10 the synthesis of the Maven and Rainbow Runner ASICs also infringe.

11 CONCLUSION

12 As discussed in detail in Ricoh's Motion, Ricoh's proposal is fair and equitable. It avoids a
 13 protracted battle over when and why highly relevant evidence was lost or destroyed. It does not
 14 materially lighten Ricoh's obligation to prove infringement, nor does it unfairly prejudice Matrox.
 15

16
 17 Dated: June 28, 2006

Respectfully submitted,

Ricoh Company, Ltd.

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